

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 293
Judiciary II Committee Substitute Adopted 4/2/03
House Committee Substitute Favorable 6/2/03
House Committee Substitute #2 Favorable 6/10/03
Fifth Edition Engrossed 6/18/03

Short Title: Sales Representative Commissions Revisions.

(Public)

Sponsors:

Referred to:

March 5, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAW GOVERNING SALES REPRESENTATIVE
3 COMMISSIONS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 27 of Chapter 66 of the General Statutes reads as
6 rewritten:

7 "Article 27.

8 "Sales Representative Commissions.

9 "§ 66-190. Definitions.

10 The following definitions apply in this Article:

- 11 (1) "Commission" means compensation accruing to a sales representative
12 for payment by a principal, the rate of which is expressed as a
13 percentage of the amount of ~~orders or sales~~ orders, sales, or profits or
14 as a specified amount per order or per sale.
- 15 (2) "Person" means an individual, corporation, limited liability company,
16 partnership, unincorporated association, estate, ~~or trust.~~ trust, or other
17 entity.
- 18 (3) "Principal" means a person ~~who does not have a permanent or fixed~~
19 ~~place of business in this State and who:~~
- 20 a. Manufactures, produces, imports, or distributes a tangible
21 product for sale at wholesale; or service;
- 22 b. Contracts with a sales representative to solicit orders for the
23 product; product or service; and
- 24 c. Compensates the sales representative, in whole or in part, by
25 commission.
- 26 (4) "Sales representative" means a person who:

- 1 a. ~~Contracts with a principal to solicit wholesale orders; orders for~~
 2 ~~products or services;~~
 3 b. Is compensated, in whole or in part, by commission;
 4 c. ~~Does not place orders or purchase for his own account or for~~
 5 ~~resale; Is not a seller who complies with:~~
 6 1. G.S. 25A-39 and G.S. 25A-40; or
 7 2. Part 429 of 16 Code of Federal Regulations (January 1,
 8 2003);
 9 d. ~~Does not sell or take orders for the sale of products at retail; and~~
 10 e. Is not an employee of the ~~principal.~~ principal;
 11 f. Does not sell or take orders for the sale of advertising services;
 12 and
 13 g. Is not a person requiring a real estate broker's or sales agent's
 14 license under Chapter 93A of the General Statutes.
 15 (5) "Terminate" and "termination" mean the end of the business
 16 relationship between the sales representative and the principal, whether
 17 by agreement, by expiration of time, or by exercise of a right of
 18 termination of either party.

19 **"§ 66-190.1. Written contracts.**

20 The agreement or contract between a sales representative and a principal shall be in
 21 writing. The absence of a written agreement or contract shall not bar a cause of action
 22 by, or any remedy available to, a party.

23 **"§ 66-191. Payment of ~~commissions.~~ commissions; termination.**

24 When a contract between a sales representative and a principal is terminated for any
 25 reason other than malfeasance on the part of the sales representative, the principal shall
 26 pay the sales representative all commissions ~~accrued under the contract to the sales~~
 27 ~~representative within 45 days after the effective date of the termination.~~ due under the
 28 contract within 30 days after the effective date of the termination and all commissions
 29 that become due after the effective date of termination within 15 days after they become
 30 due. If the principal does not make payment as required by this section, the sales
 31 representative shall make a written demand upon the principal, sent by certified mail,
 32 for the commissions then due. The principal shall respond in writing to the demand
 33 within 15 days after the principal receives the written demand.

34 **"§ 66-192. Civil liability.**

35 (a) A principal who fails to comply with the provisions of ~~G.S. 66-191~~ G.S.
 36 66-191 or is shown to have wrongfully revoked an offer of commission under G.S.
 37 66-192.1 is liable to the sales representative in a civil action for (i) all amounts due the
 38 sales representative plus exemplary damages in an amount not to exceed two times
 39 the amount of commissions due the sales representative, (ii) attorney's fees actually and
 40 reasonably incurred by the sales representative in the action, and (iii) court costs.

41 (b) Where the court determines that an action brought by a sales representative
 42 against a principal under this Article is frivolous, the sales representative is liable to the
 43 principal for court costs and for attorney's fees actually and reasonably incurred by the
 44 principal in defending the action.

1 (c) A principal who is not a resident of this State who contracts with a sales
2 representative to solicit orders in this State shall be subject to personal jurisdiction as
3 provided in G.S. 1-75.4.

4 (d) Nothing in this Article shall invalidate or restrict any other or additional right
5 or remedy available to a sales representative or preclude a sales representative from
6 seeking to recover in one action on all claims against a principal.

7 **"§ 66-192.1. Revocable offers of commission; entitlement.**

8 If a principal makes a revocable offer of a commission to a sales representative, the
9 sales representative is entitled to the commission agreed upon if:

10 (1) The principal revokes the offer of commission;

11 (2) The sales representative establishes that the revocation was for the
12 purpose of avoiding payment of the commission;

13 (3) The revocation occurs after the principal has obtained a written order
14 for the principal's product or service because of the efforts of the sales
15 representative; and

16 (4) The principal's product or service that is the subject of the order is
17 provided to and paid for by a customer.

18 **"§ 66-193. Contracts void.**

19 A provision in any contract between a sales representative and a principal purporting
20 to waive any provision of this Article, whether by expressed waiver or by a contract
21 subject to the laws of another state, is void."

22 **SECTION 2.** This act becomes effective October 1, 2003, and applies to
23 causes of action accruing on or after that date.